



POLICE DEPARTMENT

March 18, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22296
Lieutenant C. D. Michael Raso	:	
Tax Registry No. 933235	:	
Firearms Suppression Division	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Angela Shamay, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Lieutenant Michael Raso, while on-duty and assigned to the Strategic Response Group, on or about June 19, 2019, stopped [Person A] without sufficient legal authority.

P.G. 212-11

INVESTIGATIVE ENCOUNTERS
REQUESTS FOR INFORMATION,
COMMON LAW RIGHT OF
INQUIRY AND LEVEL 3 STOPS
COMMAND OPERATIONS

2. Said Lieutenant Michael Raso, while on-duty and assigned to the Strategic Response Group, on or about June 19, 2019, failed to provide [Person A] with a Right to Know Act business card.

P.G. 203-09(4)
[now encompassed by A.G. 304-11(4)]

PUBLIC CONTACT GENERAL
COMPLIANCE WITH CITY
RIGHT TO KNOW ACT

3. Said Lieutenant Michael Raso, while on-duty and assigned to the Strategic Response Group, on or about June 19, 2019, deactivated his Body-Worn Camera prior to the conclusion of his interaction with [Person A]

P.G. 212-123

USE OF BODY-WORN CAMERAS
COMMAND OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 10, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called CCRB Investigator Griffin Sherbert as a witness, and introduced hearsay statements of the complainant along with Body-Worn Camera footage from several officers on the scene. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of each of the three charges, and

recommend that he forfeit three (3) vacation days, and receive training on Body-Worn Camera and Right to Know Card procedures.

ANALYSIS

This case stems from a police encounter with an individual (“the complainant”) shortly before midnight on June 19, 2019. Respondent and two police officer colleagues assigned to the City-Wide Anti-Crime Unit were patrolling the confines of the 77 and 79 Precincts in Kings County, when they observed the complainant enter the front passenger seat of a legally parked vehicle, a GMC truck, near the intersection of Madison Street and Howard Avenue. It is alleged that Respondent and the other officers wrongfully stopped the complainant. Respondent also is charged with deactivating his Body-Worn Camera (“BWC”) prematurely, and failing to provide a Right to Know business card to the complainant.

The complainant, who has relocated out-of-state, did not appear to testify. Instead, the Department Advocate introduced into evidence a recorded in-person interview of the complainant by the CCRB on August 29, 2019, along with the accompanying transcript (Dept. Exs. 6 & 7). It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe the witness’s demeanor. In the absence of live testimony from the complainant here, this tribunal carefully considered his prior statements, in conjunction with the other evidence presented at trial.

In the CCRB interview, the complainant stated that he was coming from the gym and stopped at a store to buy some food. He then proceeded to his father’s car, which was parked

near his home, and sat in the front passenger seat. The engine was not working at the time, so the vehicle was just sitting there. The complainant was in the car for about a minute, looking at his phone, when he noticed plainclothes police officers shining their flashlights in his car, knocking on the car door, and telling him to get out. He exited the vehicle, told them that it was his father's car, showed them the car keys, and tried to call his father on his cell phone. One of the officers grabbed the phone, and the complainant could hear it crack. The police checked his pockets, then had him stand behind the car, while one of the officers searched his vehicle. They explained to the complainant that the reason they approached him was because the complainant had been looking around before he entered the car. The complainant wondered to himself, "I can't look, I can't look at my surroundings? From Brooklyn. Come on. Like, this guy's insane." They asked the complainant for identification, which he provided. The complainant confronted the officer about breaking his phone, which the officer denied, and the police left the location. (Dept. Ex. 7 at 3-14, 20-27, 32, 42-47)

After he left the scene, the complainant went to the precinct and filed a complaint. A copy of that complaint was admitted into evidence as Dept. Ex. 2. In that complaint, the complainant wrote that he was sitting in his father's car when the officers, all "white big men with cams on their chest," made him get out of the vehicle. He told them it was his father's car, showed them the keys, and tried to call his father, but one of the officers snatched the phone and cracked the back of the phone. The officers checked the complainant and the car, looked at his identification, and told him he was "good to go." He concluded by writing, "Sad I can't even relax in my own father's car."

BWC footage from Respondent (Dept. Ex. 3) shows Respondent pulling alongside the complainant's vehicle, with all three officers exiting their vehicle and approaching the

complainant's truck. The sound does not activate until about one minute into the recording, after the complainant already has been removed from the vehicle. The footage shows the ensuing interaction, which lasts approximately seven minutes. Initially, the officers pat down the complainant, who is using his cell phone to try to call his father; the officers instruct him to put the phone away several times, before one of the officers grabs the phone from the complainant's hand, and the complainant accuses the officer of breaking the phone. The officers then move him to the rear of the vehicle, while one officer searches the interior of the truck. The complainant provides his identification, and the officers explain to him that he was stopped because of the way he was looking around before entering the vehicle. After everything checks out, Respondent apologizes to the complainant, provides his name, then walks back to his vehicle. Respondent's BWC footage concludes at that point.

The footage from the two other officers at the scene (Dept. Exs. 4 & 5) similarly captures the encounter, beginning with their approach to the complainant's vehicle, with the officers shining their flashlights into the car from the driver's side and passenger's side. However, the footage from one of the officers extends an extra minute, during which the complainant continues to complain to the officer about his phone being damaged (Dept. Ex. 4).

Respondent testified that they were patrolling an area where the communities were suffering from an increase in violence and shootings. Respondent, a lieutenant, was driving an unmarked vehicle, and he and his two police officer colleagues were in plainclothes. As they approached the intersection, Respondent, who was driving very slowly, observed that the complainant appeared to be "concerned about his surroundings," looking behind him and to his left and right as he approached a parked vehicle. The vehicle looked like it had not been moved for a while; Respondent explained that the truck was dusty and covered with soot, which was

amplified by the drizzling rain, and that there was debris that had accumulated under it. From Respondent's experience, vehicles such as this may be used to hide weapons and narcotics. Respondent observed the complainant, who was holding a bag that might have come from a bodega, lean into the vehicle and place something inside. The complainant leaned back, then entered the vehicle on the passenger side, but Respondent did not see the complainant using keys to do so. There was no one in the driver's seat, which struck Respondent as "odd." (Tr. 60-65, 73-76, 79-80, 84)

Based on the totality of his observations, Respondent suspected the complainant of possible criminality. He pulled his vehicle up to the parked truck, and he and his colleagues exited their police car. One of the officers walked up to the driver's side of the vehicle, while Respondent and the other officer approached on the passenger side. The passenger-side officer asked the complainant to step out of the vehicle, and the complainant complied. Respondent testified that he smelled the odor of marijuana through the open door. He described the complainant's actions, such as insisting on calling his father, as "uncooperative." Respondent told the complainant to let them do their investigation. They brought the complainant to the rear of the vehicle while it was being searched, informed him why he had been stopped and, within a few minutes, determined there was no reason to detain him further. Respondent provided his name to the complainant, apologized to him, and said it was okay for him to go. (Tr. 63-68, 83-98)

As he was walking back to his police vehicle, Respondent deactivated his BWC, since he believed that their police enforcement activity had concluded. However, he was called back to the complainant, who was complaining to one of the officers about his broken phone. Respondent testified that he noticed that that officer's BWC was still rolling, and Respondent,

himself, was “not entertaining” the complainant’s continued protestations about his phone, which Respondent did not believe had been broken. As such, Respondent did not reactivate his BWC. Respondent acknowledged that he did not provide the complainant with a Right to Know business card, since he had run out of the cards and did not have any with him. (Tr. 69-70, 92-93)

Counsel for Respondent correctly points out that the complainant did not appear to testify, and so there was no opportunity to cross examine him regarding his statements. Nevertheless, much of his account was corroborated by the BWC footage in evidence, as well as the testimony of Respondent himself, and I credit the complainant’s description of events. With that in mind, we turn to the specific charges in this case.

Specification 1 charges Respondent with stopping the complainant without sufficient legal authority. Section 212-11 of the Patrol Guide provides that a stop may be conducted “only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor.” An encounter constitutes a stop when a reasonable person would not feel free to disregard the officer and walk away.

Here, the officers approached the complainant’s vehicle on each side, shined their flashlights inside, banged on the car door, and ordered the complainant to exit the vehicle. In his CCRB interview, the complainant stated that the officers were “on this door knocking, bam, bam, bam. Get out.” (Dept. Ex. 7 at 43) The BWC footage shows the officers approaching with their flashlights shining into the vehicle, and the complainant being removed from the truck, though there is no audio to capture what was being said during the first minute. Based on the totality of the circumstances in this matter, the collective actions of Respondent and his two

colleagues amounted to a stop of the complainant. At issue, then, is whether Respondent possessed reasonable suspicion to justify the stop. I find that he did not.

What initially drew Respondent's attention was the way in which the complainant appeared concerned about his surroundings, looking left and right before entering the vehicle. Respondent, an experienced lieutenant with nearly 16 years of service at the time of the incident, observed that the vehicle appeared to be abandoned: the exterior was covered in dust and soot, and debris had accumulated underneath the truck. His suspicions were further aroused after seeing the complainant place an object inside the vehicle, then enter on the passenger side, even though there was no driver.

However, Respondent's observations did not rise to the level of reasonable suspicion that the complainant had committed, was committing, or was about to commit a crime. There was no call to the location reporting criminal activity. Respondent did not observe the complainant in possession of narcotics or an unlawful weapon; the only object Respondent saw in the complainant's possession was a bag, which looked like a store bag. Although Respondent did not see the complainant use keys to enter the vehicle, he also did not see the complainant break a window, jimmy the door, or do anything illegal to gain entry.

Although it turned out that Respondent was correct in his belief that the vehicle had not been moved for some time, that observation did not suggest criminal activity; the complainant was well within his rights to enter the vehicle and sit in the front passenger seat. Moreover, the fact that the complainant was looking around before he entered the vehicle was not indicative of criminality. As the complainant asked rhetorically in his statement to the CCRB, "I can't look at my surroundings? From Brooklyn?"

Taken as a whole, Respondent did not have a “particularized and objective basis” for suspecting the complainant of criminal conduct. It is well-settled that “hunches or gut feelings” are not sufficient, even for an experienced member of the service like Respondent; the officer must articulate specific facts establishing a justification for the stop. This Respondent failed to do, and I find him guilty of Specification 1.

Specification 2 charges Respondent with failing to provide the complainant with a Right to Know business card. Section 203-09 of the Patrol Guide requires an officer who engages in a stop of an individual to offer a Right to Know card to that individual upon completion of the law enforcement activity.

It is undisputed that Respondent did not offer or provide a card to the complainant. The BWC footage shows that no such exchange occurred, and Respondent, himself, concedes that he did not provide a card. Respondent explained that he had mistakenly run out of cards, which is why he did not provide one. However, the Patrol Guide specifically makes clear that a UMOS, at a minimum, must carry an appropriate amount of generic Right to Know cards in case the supply of pre-printed cards becomes depleted. Since Respondent failed to do so, I find him guilty of Specification 2.

Specification 3 charges Respondent with deactivating his BWC prior to the conclusion of his interaction with the complainant. Section 212-123 of the Patrol Guide requires a UMOS to “continue recording until the investigative, enforcement, or other police action is concluded.” Here, a review of Respondent’s BWC footage shows that he deactivated his camera as he was walking back to his vehicle. Respondent admitted he did so, explaining that he determined that the law enforcement activity was completed when he informed the complainant that he was free to go, and there was no reason for continued recording.

However, the footage from one of his colleagues (Dept. Ex. 4) shows that as Respondent was walking back to his car, the complainant was still complaining to one of the officers about his phone being damaged during the stop. Respondent can be seen walking back over to the complainant, where the interaction continued for approximately one more minute. However, Respondent did not reactivate his camera; he explained that he did not credit the complainant's statement about the phone being broken, and so there was no need to record the interaction at that point. Further, he noticed that his colleague's camera was still recording, so there was no necessity for him to do so as well.

Even though Respondent had determined that there was no reason to further detain the complainant, the police encounter had not yet concluded. The complainant was continuing to voice his concerns about his phone, which he alleged had been damaged while the stop was being conducted. One of Respondent's fellow officers was still engaged in conversation with the complainant. Under these circumstances, Respondent had an obligation to keep his BWC activated. This he failed to do, and I find Respondent guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 1, 2003, has been found Guilty of conducting a stop without sufficient legal authority, as well as two other charges in connection with the incident (failing to provide a Right to Know card, and negligently deactivating his BWC prematurely). The Department Advocate recommends the presumptive penalty for each of the offenses: three vacation days for the stop, three days for the Right to Know card, and one day for the BWC. The Advocate also recommends that the three-day penalties for the stop and the Right to Know card offenses run concurrently, which, when added to the one day for the BWC charge, brings the Advocate's total penalty recommendation to four vacation days.

Under the circumstances presented here, I agree that the presumptive penalty is appropriate for the wrongful stop. On the one hand, Respondent has a strong record with the Department: he has been awarded numerous medals in recognition of his performance, and has received consistently exceptional evaluations. However, given his experience and rank, more is expected of Respondent, particularly in a situation where he, as a lieutenant, was in a position to set an example for the two uniformed officers he was working with on the night of this incident. As such, no mitigation is warranted for the wrongful stop, and a penalty of three (3) vacation days is appropriate.

However, with respect to the BWC and Right to Know Card offenses, I find that the mitigated penalty of training is appropriate for each. On the one hand, Respondent did fail to reactivate his BWC when he and his colleagues continued to engage with the complainant regarding his cell phone, and Respondent readily admitted that it was a mistake not to have any Right to Know cards in his possession. However, it is to Respondent's credit that he initially activated his camera in a timely manner, and captured the majority of the encounter except for

the final minute. At the point he deactivated his camera, he was walking back to his police vehicle; there was no indication that Respondent deactivated his BWC with bad intentions. Additionally, on the BWC footage, Respondent can be heard explaining to the complainant why he was being stopped. Respondent verbally de-escalated the encounter, spoke courteously to the complainant, and clearly stated his name before departing. Although none of these factors excuse Respondent's misconduct, they do provide a basis for mitigating the penalties.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit three (3) vacation days for the wrongful stop, and that he receive training with respect to Body-Worn Camera and Right to Know business card procedures.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 08 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT C.D. MICHAEL RASO
TAX REGISTRY NO. 933235
DISCIPLINARY CASE NO. 2020-22296

Respondent was appointed to the Department on July 1, 2003. On his three most recent annual performance evaluations, he received 5.0 ratings of “Extremely Competent” for 2017, 2018 and 2019. He has been awarded 66 medals for Excellent Police Duty, 13 medals for Meritorious Police Duty, one medal for Exceptional Merit, three Honorable Mentions, two Commendations, one medal for Valor and one Combat Cross.

Respondent has no adverse findings in his formal disciplinary record.

From April 2007 through July 2008, Respondent was placed on Level 1 Force Monitoring for having received three or more CCRB complaints in one year.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials